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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,508	05/24/2001	Runhai Lu	MBC-0418	2437

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EXAMINER

GREEN, ANTHONY J

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/864,508

Applicant(s)

LU, RUNHAI

Examiner

Anthony J. Green

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003 and 21 November 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-21, 23-35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-21, 23-35, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendment submitted on 9/11/03 and 11/21/03. Based on applicants arguments and amendments the rejection of the claims over the Hess et al reference are overcome. Claims 10, 22, and 36 have been canceled.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 11-35 and 37-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In independent claims 11 and 25 the phrase "the admixture" lacks proper antecedent basis as "admixture" is not positively recited in the claims.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action

5. Claims 1-4, 7-9, 11-16, 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT International Application No. 98/05709 for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the instant claims are not met by the reference as the enhancing material of the reference differs in both chemical form and function from the polymer of the instant invention and does not function as a water repellant but rather functions as a dispersant.

It is the position of the examiner that the instant claims are rendered obvious by the reference as applicant is arguing limitations that are not present in the instant claims. Note that the instant claims are merely directed to a cement additive and a cement comprising the additive, and this is rendered obvious by the reference which teaches that the instant additives are all well known in the art. Accordingly applicant's arguments are not commensurate in scope with the claims as amended.

6. Claims 1-3, 5-7, 11-15, 17-19, 23-29, 31-33 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eash (US Patent No. 4,151,150 for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the reference does not teach or suggest to increase the water repellency of cementitious compositions but rather that cementitious compositions without silane compounds do not provide enhanced strength properties to cement.

It is the position of the examiner that the instant claims are rendered obvious by the reference as applicant is arguing limitations that are not present in the instant claims. Note that the instant claims are merely directed to a cement additive and a cement comprising the additive, and this is rendered obvious by the reference which teaches that the instant additives are all well known in the art. Accordingly applicant's arguments are not commensurate in scope with the claims as amended.

***Allowable Subject Matter***

7. Claims 34-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and provided that any 112 second paragraph rejections if any are overcome.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

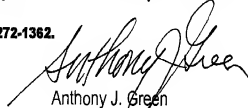
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367.**

**The examiner can normally be reached on Monday-Thursday 6:30-4:00.**

**If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L. Bell can be reached on 571-272-1362.**

  
Anthony J. Green  
Primary Examiner  
Art Unit 1755

ajg  
December 29, 2003